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In a majority of the states of this country it is held that, when on an indictment for murder, the accused is found guilty of a lesser offense, it is virtually an acquittal of the higher offense. *Hunt v. State*, 25 Miss. 358; *Smith v. State*, 22 Texas App. 316. And the only effect of setting aside the verdict and granting a new trial is to leave undetermined the question whether the accused committed the lesser offense. *State v. Belden*, 33 Wis. 121; *Johnson v. State*, 27 Fla. 245. But there are a number of states in which it is held that the principle that no man can be twice put in jeopardy for the same offense means "without his consent," and he may avail himself of the privilege, or not, as he pleases. *State v. Bradley*, 67 Vt. 465. And the effect of setting aside a verdict, finding the defendant guilty of manslaughter, is to leave at issue and undetermined the fact of the homicide, also the fact whether the defendant committed it if one was committed. *State v. Behrmer*, 20 Ohio St. 572; *State v. Gillis*, 73 S. C. 318. The accused is tried on the original indictment, and the trial proceeds as if no other trial had ever been held. *State v. Morrison*, 67 Kan. 144; *Waller v. State*, 104 Ga. 505.

DAMAGES—GROUNDS—MENTAL SUFFERING.—ST. LOUIS, I. M. & S. RY. CO. v. TAYLOR, 104 S. W. (ARK.) 551.—*Held*, that under the rule that mental suffering alone, without physical injury or other elements of damage, cannot be made the subject of an independent action for damage, even where the act or violation of duty complained of was wilfully committed, a railroad is not liable for damages to a passenger for mental suffering caused by mere verbal abuse of the station agent. Wood and Riddick, J.J., *dissenting*.

General rule is that mental suffering alone gives no right of action, *Lynch v. Knight*, 9 H. L. Cases 577; *Joch v. Dankwordt*, 85 Ill. 331. The cases allowing recovery for it can be grouped into three classes. First, when it is intimately connected with personal injury, *Robertson v. Cornelson*, 34 Fed. Rep. 716; *McMahon v. The Northern C. R. R. Co.*, 39 Md. 438, or when it is natural or proximate consequence of some recognized cause of action, *Gilvey v. Lewis*, 68 Conn. 392; or actionable injury, *Stone v. Heywood*, 7 Allen (Mass.) 118. Second, breach of contract for marriage and in seduction cases, *Southerland Damages*, 732; *Lunt v. Philbrick*, 59 N. H. 59. Third, when a wilful wrong has been committed, *William v. Underhill*, 71 N. Y. Supp. 291; *W. U. Tel. Co. v. Henderson*, 89 Ala. 510, although on this point the authorities are not harmonious. This latter doctrine in some cases is extended to allow recovery for any injury connected with insult or malice, *Schmitz v. The St. L. I. M. & S. Ry. Co.*, 119 Mo. 256, or grief, etc., *Wadsworth v. M. N. Tel. Co.*, 86 Tenn. 695, and this without proof of any pecuniary loss, *Reise v. M. N. Tel. Co.*, 123 Ind. 294, since, the courts say, mind is no less a part of the person than the body, and sufferings of former are sometimes more acute than latter, *Young v. Telegraph Co.*, 107 N. C. 370, and even going so far as to say that wounding a man's feelings is as much actual damage as breaking his limbs, *Herd v. The Georgia R. Co.*, 79 Ga. 358.

DEAD BODIES—POWER TO ORDER EXHUMATION—RIGHTS OF WIDOW.—MUTUAL LIFE INS. CO. OF N. Y. v. GRIESA, ET AL., 156 FED. 398.—*Held*, that a court of law has no power to order the exhumation of a dead body in an action at law to which the widow of the deceased, who has the right to control the body, is not a party.

A dead body is not property in the strict sense of the common law, but it is a quasi property, and those having it in charge hold it as a trust which a Court of Equity will regulate, *Cunningham v. Reardon*, 98 Mass. 538, but there is not any universal rule as to the burial of the dead applicable alike to all cases, and each case must be considered in equity upon its own merits, though the paramount right is in the surviving husband or wife. *Pettigrew v. Pettigrew*, 207 Pa. St. 313. The majority of cases show that the surviving husband or wife has the superior right to the body before or after burial, as in the case of *Durell v. Hayward*, 9 Gray. 248, where the relatives of the deceased placed a tombstone over the grave, without the consent of the surviving husband, and it was held that he could remove it, though this right is subject to statutory provisions in some states, as in the case of *Young v. The School of Physicians and Surgeons*, 81 Md. 358, where, under a local law of Baltimore City, the coroner had power to hold inquests and to order autopsies, and he ordered the autopsy and mutilated the body without the consent of the widow, he was held not liable for the same.

DEEDS—PRESUMPTION AS TO DELIVERY.—*CRABTREE V. CRABTREE*, 113 N. W. (IOWA) 123.—*Held*, where a deed bears one date and the certificate of acknowledgment a later date, the date of the certificate is presumed to be the time of delivery.

Generally, the date of the deed is presumptively the date of delivery. *Wickham v. Morehouse*, 16 Fed. 324; *Smith v. Porter*, 10 Gray. 66. The burden of proof is on the party alleging the contrary. *Williams v. Armstrong*, 130 Ala. 389. Possession of deed by grantor subsequent to date of deed refutes presumption. *Harris v. Norton*, 16 Barb. 264. By weight of authority this presumption is not overcome by the fact that the certificate of acknowledgment bears a later date. *Biglow v. Biglow*, 56 N. Y. Supp. 794; *Hardin v. Crote*, 78 Ill. 533. Some courts, nevertheless, hold that date of acknowledgment is presumptively the date of delivery. *Atlantic City v. New Auditorium Pier Co.*, 63 N. J. Eq. 644. But in some jurisdictions this is because acknowledgment is necessary to a valid execution of the deed. *Bailey v. Selden*, 124 Ala. 403.

DIVORCE—DECREE—SETTING ASIDE.—*WOOD V. WOOD*, 113 N. W. (IOWA) 492.—*Held*, that a decree in a divorce suit may be assailed the same as any other judgment where property interests are directly affected, and may be vacated after the death of the parties.

In England, sentences of divorce could not at first be re-examined after death of one of the parties, *Robertson v. Stollage*, Cro. & Jac. 186, but the rule now is that it can be opened when fraud is charged. *Harrison v. Southampton*, 21 Eng. L. Eq. 343. Early American cases recognized the right, but were doubtful as to procedure, *Wren v. Moses*, 7 Ill. 72, but the authorities are practically unanimous now, that, in the absence of statutory qualifications, a decree of divorce may be vacated after death of parties, *Fidelity Ins. Co.'s Appeal*, 93 Pa. St. 242, *Adams v. Adams*, 51 N. H. 388, when obtained by fraud, *Brown v. Grove*, 116 Md. 84; but not for mere gratification of personal feeling, *Nichols v. Nichols*, 25 N. J. Eq. 60, or for purely sentimental reasons, *Lawrence v. Nelson*, 113 Iowa 277; but there must be property rights involved, *Johnson v. Coleman*, 23 Wis. 452, *Bousta v. Johnson*, 38 Minn. 230. Tennessee, Colorado and Washington seem to be the only exceptions. Tennessee Statute provides that the only method of reviewing